

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

B-218592

**FILE:****DATE:** August 5, 1985**MATTER OF:**John Morris Equipment and Supply  
Company**DIGEST:**

1. Protest that requirement that washers and dryers, to be furnished and maintained by the contractor, have been in use for not more than 2 years exceeds the agency's minimum needs is denied where protester fails clearly to demonstrate that contracting officials lacked a reasonable basis for determining that the requirement was necessary in order to reduce the delay and inconvenience caused by inoperative machines. Agency data on the performance of machines under the current contract with the protester suggests that machines which had been in use for more than 2 years were inoperative as much as 14 times more days per year than machines in use for 2 or less years.
2. Protest of incumbent contractor furnishing its washers and dryers to the agency that requirement in the new solicitation that machines have been in use for not more than 2 years will preclude protester from using most of its machines to perform a new contract or from reselling them to the successful bidder is denied. If the protester is alleging that the current contract guarantees the right to reuse or to resell for reuse with the contracting agency, then this is a matter of contract administration and thus not for consideration under GAO's bid protest function. If it is alleging that it is bidding at a competitive disadvantage vis-a-vis firms with newer machines, a competitive disadvantage suffered by virtue of a firm's incumbency is not an unfair disadvantage which must be eliminated by the contracting agency.

John Morris Equipment and Supply Company (Morris) protests the terms of invitation for bids No. DAKF-23-85-B-0063, issued by the Department of the Army (Army) for the furnishing, installing and maintaining of washers and dryers at Fort Campbell, Kentucky. Morris, the incumbent

032751 / 127567

contractor, alleges that the solicitation requirement that the machines installed at Fort Campbell have been in use for no more than 2 years at the start of the contract exceeds the Army's minimum needs. We deny the protest.

The Army solicited bids for meeting Fort Campbell's requirement for washers and dryers, estimated initially to total 500 washers and 495 dryers, during a base year and 4 option years. The contractor, which would retain ownership of the machines, was required to maintain the washers and dryers in an operable condition at all times and to replace those which became unserviceable or otherwise failed to conform to the specifications. In particular, the contractor was required to repair or replace any machine within 3 working days of receipt of written notice that it was inoperative and to replace within 10 days any machine which malfunctioned three times during a 10-day period. The solicitation provided that failure to meet the requirement for repair or replacement within 3 working days would result in a pro rata reduction in the monthly rental for the machine unless the failure was beyond the control of the contractor. Finally, the solicitation required that washers and dryers initially furnished by the contractor have been in use for no more than 2 years at the start of the contract and that the machines subsequently furnished for the option years and as replacements "shall not be older than the machines in use at start of contract (base year)."

Morris contends that the requirement that the machines have been in use for no more than 2 years was "unreasonable" because the contractor was already required to maintain the machines and, in any case, "older" machines with more than 2 years of use are not significantly less reliable than "newer" machines with 2 years or less of use.

In response, the Army notes that more than 88 percent of the washers and dryers now installed at Fort Campbell have been in use for 7 or 8 years and states that numerous complaints have been received as to the condition and maintenance of the machines. It views with particular concern the inconvenience and loss of time which service members must endure when washers and dryers break down. It hopes to reduce the number of breakdowns, and thus the number of days the machines are inoperative, by requiring them to have been in use for less than 2 years.

Based upon its experience under the current contract, the Army maintains that there is a significant difference in the reliability of "older" washers and dryers which have been in use for more than 2 years as compared to the reliability of "newer" machines which have been in use for 2 or less years. Thus, contracting officials cite Army data which indicates that "older" washers required on average 5.77 service calls per year, with an average of 48 percent of the machines requiring a service call in any month, while "newer" washers only required 0.41 service calls per year. <sup>1/</sup> We note in this regard that the contracting officer, in responding to this protest, has extrapolated from the Army data to argue that these numbers mean that "older" washers were fully operational only 52 percent of the time while "newer" washers were operational approximately 97 percent of the time. He makes a similar argument concerning the reliability of dryers, indicating that "older" dryers were fully operational only 68 percent of the time while "newer" dryers were fully operational 96 percent of the time.

Morris, on the other hand, challenges both the accuracy of the Army's raw data and the interpretation of that data. Morris contends that the Army understated the number of "newer" machines in use for less than 2 years, understated the number of service calls required by "newer" washers and overstated the number of service calls required by all washers. In addition, it also points out that the contracting officer's claim in the administrative report that "older" washers were fully operational only 52 percent of the time is based upon the assumption that a machine requiring a service call during a particular month was inoperative for that entire month. Morris challenges that assumption, noting that under the solicitation a contractor was required to repair or replace an inoperative machine within 3 days of receipt of written notice. Moreover, argues Morris, even 3 days may be too long a period of "down" time to expect, since under the current contract Morris has allegedly repaired or replaced inoperative machines in less time.

---

<sup>1/</sup> In the administrative report responding to this protest, the latter figure was mistakenly stated to be 0.38 service calls per year.

Although Morris believes that "in all likelihood" the actual difference between "newer" and "older" machines with respect to the percentage of time a machine is inoperative is only approximately one percent, the protester emphasizes that even assuming that each service call meant that a machine was inoperative for 3 days, the firm's data indicates that "older" machines would be in service at least 96.07 percent of the time, or inoperative 14.3 days per year, while "newer" machines in use for 2 or less years would be in service only 99.31 percent of the time, or operative 2.5 days per year.

Morris questions whether this allegedly insignificant improvement in reliability justified the additional cost to the government of requiring "newer" machines in use for 2 or less years. Moreover, it points out that this requirement is likely to prove costly to Morris whether it receives the contract or not, since the provision will preclude it either from using the great majority of its machines in performing a new contract or from reselling them to the successful bidder.

The determination of the government's minimum needs and the best method of accommodating those needs are primarily the responsibility of the contracting agencies. We have recognized that government procurement officials, since they are the ones most familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Sunbelt Industries, Inc., B-214414.2, Jan. 29, 1985, 85-1 C.P.D. ¶ 113; see Arwell Corp., B-210792, Dec. 14, 1983, 83-2 C.P.D. ¶ 684 (minimum need for new equipment).

We agree with Morris that the assumption that a machine requiring a service call will be inoperative for an entire month is unreasonable in view of the solicitation requirement for repair or replacement within 3 working days of written notice. We point out in this regard that the cognizant Army technical officer in fact concluded that the 5.77 service calls required by "older" washers with more than 2 years of use equated to approximately 15 inoperative days per year, or approximately 2.6 days per service call.

Applying this same factor to the 0.41 service calls required by "newer" washers suggests that the "newer" machines would on average be inoperative only 1.066 days per year.


Nevertheless, we are unable to conclude that Morris has clearly shown that contracting officials lacked a reasonable basis for requiring machines which have been in use for less than 2 years. That the contractor was already required under the specifications to repair or replace an inoperative machine within 3 days does not demonstrate the unreasonableness of attempting to reduce the number of inoperative periods, thereby reducing the total number of inoperative days each year. Even Morris' calculations indicate that when a 3-day "down" time is assumed, "older" machines might be as much as 5.7 times more likely to be inoperative than "newer" machines in use for 2 years or less, while the Army's records suggest the existence of as much as a 14-fold increase in inoperative time for "older" machines. Moreover, we note that any particular period of "down" time may, in fact, exceed 3 calendar days under certain circumstances, since the specifications only require repair or replacement within 3 work, not calendar, days of receipt of written notification.

We recognize that installation of washers and dryers which have been in use for 2 or less years at the beginning of the contract may result in some machines having been in use for more than 2 years by the end of the contract. Nevertheless, there has been no showing that the reliability of washers and dryers suddenly and dramatically deteriorates at the beginning of the third year of use. Nothing indicates that machines with less than 2 years of use at the beginning of the contract will not retain for some time an advantage over "older" machines with respect to reliability.

As for Morris' concern that the specifications will preclude either the use of most of its machines currently at Fort Campbell to perform the new contract or their resale to the successful bidder, we note that the Army has informed us that no provision in Morris' current contract guarantees the contractor that its machines can be reused under a new contract. In any event, the enforcement of any rights under the prior contract would be a matter of contract administration and thus not for consideration here. 4 C.F.R. § 21.3(f)(1) (1985); see also Datastrip Corp., B-217581, Jan. 25, 1985, 85-1 C.P.D. ¶ 105.

If, on the other hand, Morris is arguing that the requirement places the firm at a disadvantage in competing for the new contract, then we note that a contracting agency has no obligation to compensate for the advantages enjoyed by some firms, advantages which are not the result of preferential or unfair government action, in order to equalize the competitive position of all potential bidders. See Emerson-Sack-Warner Corp., B-206123, Nov. 30, 1982, 82-2 C.P.D. ¶ 488. We do not believe that competitive disadvantages suffered by virtue of a firm's incumbency are unfair disadvantages which must be eliminated by the contracting agency. Cf. Rolm Corp., B-214052, Sept. 11, 1984, 84-2 C.P.D. ¶ 280 (advantages gained by virtue of incumbency are not unfair advantages which must be eliminated).

The protest is denied.

  
for Harry R. Van Cleave  
General Counsel